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Attachment 1

John Roddy

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January 14, 2002

*By Hand*

Clerk, Civil Business  
Suffolk Superior Court  
810 U.S. Post Office & Courthouse  
90 Devonshire Street  
Boston, MA 02108

Re: *Dwyer, et al. v. Nstar Electric & Gas Corporation, et al.,  
Civil Action No. 01-1817-C (Suffolk Superior Court)*

Dear Sir or Madam:

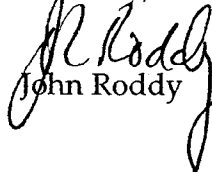
Enclosed for filing in the referenced matter please find the following:

1. Joint Motion to Dismiss NSTAR, Inc.;
2. Amended Class Action Complaint;
3. Plaintiffs' Assented To Motion For Preliminary Approval of Settlement Agreement;
4. Plaintiffs' Memorandum In Support Of Motion For Preliminary Approval of Settlement Agreement; and
5. Stipulation And Agreement Of Compromise And Settlement.

Please acknowledge your receipt and filing of the enclosure by date stamping the enclosed copy of this letter and returning it to me in the self-addressed, stamped envelope provided.

Your courtesy and attention to this matter are appreciated.

Sincerely,

  
John Roddy

JR:pc  
Enclosures  
cc: Service List

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
C.A. NO. 01-1817-C

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SHARON DWYER,  
JULIE EDWARDS and GEORGE GRAZIANO,  
individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,  
BOSTON EDISON COMPANY,  
COMMONWEALTH ELECTRIC COMPANY, and  
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

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**JOINT MOTION TO DISMISS NSTAR, INC.**

Pursuant to Mass. R. Civ. P. 23(c), Sharon Dwyer, Julie Edwards and George Graziano, individually and on behalf of others similarly situated (the “Plaintiffs”), and Boston Edison Company (“Boston Edison”), Commonwealth Electric Company (“Commonwealth”), Cambridge Electric Light Company (“Cambridge”), and NSTAR Electric & Gas Corporation<sup>1</sup> (jointly, the “Defendants” or the “NSTAR Entities”), file jointly for dismissal of “NSTAR, Inc.” as a defendant in this action. In support thereof, the parties jointly assert as follows:

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<sup>1</sup> Contemporaneously herewith, Plaintiffs have filed an amended complaint as of right pursuant to Mass. R. Civ. P. 15(a) and have added NSTAR Electric & Gas Corporation as a defendant in this matter. The parties’ proposed settlement of this matter is with NSTAR Electric & Gas Corporation rather than with NSTAR or NSTAR, Inc.

1. For purposes of this motion, it is stipulated that the Plaintiffs, in naming NSTAR, Inc.,<sup>2</sup> intended to name NSTAR as a defendant in this action. NSTAR, a Massachusetts business trust, is the parent company for Boston Edison, Commonwealth and Cambridge.

2. In the course of seeking to resolve this matter by settlement, Plaintiffs' counsel have learned that NSTAR has no customers or applicable tariffs, does not provide electricity or gas service, and, therefore, has no class of customers that are similarly situated to the Plaintiffs. Further, NSTAR has no independent ability to grant relief to, or fashion a remedy for, the Plaintiffs in this case. Boston Edison, Cambridge and Commonwealth are each individual and separate corporations doing business in Massachusetts. Each of the NSTAR Entities has its own service territory, its own set of tariffs and its own set of customers. Each of these Defendants provides default service and standard offer service to retail customers, and, as a result of the Plaintiffs' action, has identified a certain number of current customers who qualify for standard offer service, but have been receiving and charged for default service as set forth.

3. NSTAR Electric & Gas Corporation is an affiliate to Boston Edison, Cambridge and Commonwealth that provides administrative and professional services including, but not limited to, billing services to its affiliates. As a result, the NSTAR Entities have executed a Settlement Agreement with the Plaintiffs on this date setting forth the manner in which customers who are or may be on the incorrect rate are identified and placed on the correct rate. No relief under the settlement agreement runs against NSTAR, Inc. or NSTAR.

4. There is no prejudice to potential class members in dismissing NSTAR, Inc. and/or NSTAR from this action for the above-stated reasons, and, additionally, because such a dismissal will be without prejudice.

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<sup>2</sup> There is no actual corporation with that name in the Commonwealth.

5. NSTAR understands and agrees that the dismissal of this action against it will have no preclusive effect with respect to potential claims of any class member against NSTAR.

**WHEREFORE**, the parties pray that this Court will approve this joint motion and dismiss "NSTAR, Inc." as a defendant in this matter pursuant to Mass. R. Civ. P. 23(c).

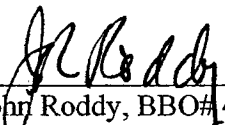
Respectfully submitted,

**SHARON DWYER, JULIE EDWARDS  
AND GEORGE GRAZIANO, individually  
and on behalf of all others similarly situated**


**BOSTON EDISON COMPANY,  
CAMBRIDGE ELECTRIC LIGHT  
COMPANY, COMMONWEALTH  
ELECTRIC COMPANY, NSTAR, AND  
NSTAR ELECTRIC & GAS  
CORPORATION**

By their attorneys,

By their attorneys,

  
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21 Custom House Street  
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(617) 951-1400

Dated: January 14, 2002

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
C.A. NO. 01-1817-C

\_\_\_\_\_  
)  
)  
SHARON DWYER, )  
JULIE EDWARDS and GEORGE GRAZIANO, )  
individually and on behalf )  
of all others similarly situated, )

Plaintiffs, )  
)

v. )  
)

NSTAR, INC., BOSTON EDISON COMPANY, )  
COMMONWEALTH ELECTRIC COMPANY, and )  
CAMBRIDGE ELECTRIC LIGHT COMPANY, )

Defendants. )  
\_\_\_\_\_)

**ORDER DISMISSING NSTAR, INC.**

And now this \_\_\_\_ , day of \_\_\_\_\_, 2002, based on the joint motion of the parties pursuant to Mass. R. Civ. P. 23(c), seeking dismissal of "NSTAR, Inc." as a defendant in this action,

It is hereby ordered and decreed that NSTAR, Inc. is dismissed as a defendant in the action.

Dated:

\_\_\_\_\_  
J.

SUPERIOR COURT  
C.A. NO. 01-1817-C

SHARON DWYER,  
JULIE EDWARDS and GEORGE GRAZIANO,  
Individually and on behalf  
of all others similarly situated,

Plaintiffs,

V.

NSTAR ELECTRIC & GAS CORPORATION,  
BOSTON EDISON COMPANY,  
COMMONWEALTH ELECTRIC COMPANY, and  
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

AMENDED  
CLASS ACTION  
COMPLAINT

## INTRODUCTION

1. Plaintiffs in this class action seek damages, restitution, declaratory and injunctive relief for defendants' failure to provide electric service to them at the rate mandated by law. Under unambiguous provisions of tariffs applicable to the defendants, and the relevant governing law, the plaintiffs and the class of consumers they seek to represent are entitled to service at the "standard offer" rate. Instead they are being charged for service at the substantially higher rate applicable to "default service".

## JURISDICTION

2. This court has jurisdiction to grant the relief sought by the plaintiffs pursuant to G.L. c. 212, §4, c. 214, §§ 1, 5, and c. 231A, §1.

## **PARTIES**

3. Plaintiff Sharon Dwyer is an individual who resides at 57 Oakwood Road, Newton, Massachusetts.

4. Plaintiff Julie Edwards is an individual who resides at 13 Lawrence Circle, Medfield, Massachusetts.

5. Plaintiff George Graziano is an individual who resides at 108 Ring Road, Kingston, Massachusetts.

6. The above named plaintiffs bring this complaint on their own behalf and as representatives on behalf of similarly situated individuals pursuant to Mass. R. Civ. P. 23.

7. Defendant NSTAR Electric and Gas Corporation is a corporation doing business in Massachusetts at 800 Boylston Street, Boston, MA 02199.

8. Defendant Boston Edison Company ("Boston Edison") is a corporation doing business in Massachusetts at 800 Boylston Street, Boston, MA 02199.

9. Defendant Commonwealth Electric Company ("Commonwealth") is a corporation doing business in Massachusetts at 800 Boylston Street, Boston, MA 02199.

10. Defendant Cambridge Electric Light Company ("Cambridge") is a corporation doing business in Massachusetts at 800 Boylston Street, Boston, MA 02199.

11. The three utility company defendants are all subsidiaries of a non-party entity known as NSTAR, a Massachusetts business trust formed in 1999 by the consolidation of the then corporate parents of Boston Edison, Commonwealth, Cambridge Electric and Commonwealth Gas Company.

12. NSTAR Electric & Gas Corporation is an affiliate to Boston Edison, Cambridge and Commonwealth that provides administrative and professional services including, but not limited to, billing services to its affiliates. NSTAR Electric & Gas Corporation bills customers and collects payments for utility service provided by the affiliated utility company defendants. Collectively, the four defendants are referred to throughout the remainder of the Complaint as NSTAR Electric, except where the context otherwise requires.

13. NSTAR Electric provides electric service to the following Massachusetts communities: Acton, Acushnet, Arlington, Aquinnah, Ashland, Assonet, Barnstable, Bedford, Bellingham, Boston, Bourne, Brewster, Brookline, Burlington, Cambridge, Canton, Carlisle, Carver, Chatham, Chelsea, Chilmark, Dartmouth, Dedham, Dennis, Dover, Duxbury, Eastham, Edgartown, Fairhaven, Falmouth, Framingham, Freetown, Harwich, Holliston, Hopkinton, Hyannis, Hyde Park, Kingston, Lakeville, Lexington, Lincoln, Marion, Marshfield, Martha's Vineyard, Mashpee, Mattapoisett, Maynard, Medfield, Medway, Middleborough, Millis, Milton, Natick, Needham, New Bedford, Newton, Norfolk, Oak Bluffs, Orleans, Pembroke, Plymouth, Plympton, Provincetown, Rochester, Sandwich, Scituate (Humarock), Sharon, Sherborn, Somerville, Stoneham, Sudbury, Tisbury, Truro, Walpole, Waltham, Wareham, Watertown, Wayland, Wellfleet, Weston, Westport, West Tisbury, Westwood, Winchester, Woburn, and Yarmouth.



## FACTUAL ALLEGATIONS

### *Background*

14. On November 25, 1997, legislation was enacted to introduce competition to the electric generation market. Statutes of 1997, ch. 164.; G.L. c. 164, § 1 et seq.

15. The legislation provides, *inter alia*, that consumers will receive either the "standard service transition rate" ("standard offer rate") or the "default service rate" ("default rate"). G.L. c. 164, §§1B(b); (d). The legislation anticipated that the standard offer rate would be lower than the default rate. Id.

16. The legislation requires that each electric service company provide the standard offer rate to those consumers within each electric distribution company's service area who were customers as of March 1, 1998 (the "retail access date") and who do not choose a competitive supplier. G.L. c. 164, §1B(b).

17. The legislation provides that customers entitled to the standard offer rate will receive that rate from March 1, 1998 until February 28, 2005. Id.

18. At all times relevant to this complaint, Boston Edison Company, the Commonwealth Electric Company and the Cambridge Electric Light Company were subject to tariffs governing the provision of electric service within their respective service areas ("the tariffs"). The tariffs are on file with the Massachusetts Department of Telecommunications and Energy. True and accurate copies of the applicable tariffs are attached as Exhibits A-C.

19. NSTAR Electric is subject to and must abide by the tariffs. The tariffs govern electric service provided by NSTAR Electric or its subsidiaries and affiliates to customers within NSTAR Electric's service area.

20. At all times relevant to the complaint, the tariffs provided that:

Standard Offer Service shall be available to each Customer who was a Customer of Record as of the Retail Access Date and who has not received Generation Service from a Competitive Supplier since the Retail Access Date.

A Customer receiving Standard Offer Service shall be allowed to retain such service upon moving within the service territory of the Distribution Company.

21. On information and belief, between March 1, 1998 and January 1, 2001, the defendants failed to maintain procedures designed to ensure that customers who moved within the defendants' service areas would retain standard offer service.

22. The plaintiffs and thousands of other customers moved within the service area of a defendant and were switched, in violation of the tariffs, from standard offer rate service to default rate service.

23. Until December 1, 2000, the standard offer rate and the default rate were the same. Since December 1, 2000, the default rate has been higher than the standard offer rate.

24. As of the date of filing of the original complaint in this matter, the default rate for customers who were previously Boston Edison customers was 7.032 cents per

kilowatt-hour for the period after January 1, 2001 while the standard offer rate was 6.215 cents per kilowatt-hour.

25. As of the date of filing of the original complaint in this matter, the default service rate for customers who were previously Cambridge Electric customers was 6.671 cents per kilowatt-hour for the period after December 1, 2000 while the standard offer rate was 5.121 cents per kilowatt-hour.

26. As of the date of filing of the original complaint in this matter, the default service rate for customers who were previously Commonwealth Electric customers was 6.985 cents per kilowatt-hour for the period after January 1, 2001 while the standard offer rate was 5.121 cents per kilowatt-hour.

27. Since January 1, 2001, customers who were improperly switched from standard offer rate to default rate service after moving from one residence to another within the service area of Boston Edison, Commonwealth Electric, or Cambridge Electric have been overcharged for electric service.

28. Some of the customers who were improperly switched from the standard offer rate to the default service rate have complained to NSTAR Electric of being charged the higher default rate.

29. Through these complaints and other communications they have received, the defendants knew or should have known that they were improperly charging the default rate to thousands of customers.

30. Despite the above-described circumstances, as of the date of filing of the original complaint in this matter, the defendants had not refunded to or credited the accounts of all of the overcharged customers; instead they provided refunds or credits only to those customers who complained of the overcharges.

31. On April 23, 2001, Ms. Dwyer, Ms. Edwards, and Mr. Graziano made demand upon defendants pursuant to M.G.L. c. 93A, § 9, on behalf of themselves and all similarly situated individuals.

32. Defendants responded to the M.G.L. c. 93A demand without making an offer of settlement to the members of the class.

### **Plaintiffs' Rate Overcharges**

#### *Sharon Dwyer*

33. Sharon Dwyer was a Boston Edison customer of record, residing at 376 Weld Street, West Roxbury, Massachusetts, as of March 1, 1998.

34. Ms. Dwyer received Boston Edison electric service at the standard offer rate on and after March 1, 1998 at her Weld Street home.

35. In or about January, 1999, Ms. Dwyer moved to 57 Oakwood Road, Newton, Massachusetts.

36. Ms. Dwyer retained her Boston Edison electric service when she made this move from one part of the Boston Edison service area to another.

37. Since December 1, 2000, and for a significant period thereafter, NSTAR Electric has charged Ms. Dwyer at the higher, default rate for electric service.

38. Ms. Dwyer is entitled to the lower, standard offer rate service.

39. Since December 1, 2000, and for a significant period thereafter, Ms. Dwyer paid NSTAR Electric at the higher, default rate, unaware of the overcharge.

*Julie Edwards*

40. Julie Edwards was a Boston Edison customer of record, residing at 46 Saint Theresa Avenue, West Roxbury, Massachusetts, as of March 1, 1998.

41. Ms. Edwards received Boston Edison electric service at the standard offer rate on and after March 1, 1998 at her Saint Theresa Avenue home.

42. In or about June, 1998, Ms. Edwards moved to 13 Lawrence Circle, Medfield, Massachusetts.

43. Ms. Edwards retained her Boston Edison electric service when she made this move from one part of the Boston Edison service area to another.

44. Since December 1, 2000, and for a significant period thereafter, NSTAR Electric charged Ms. Edwards at the higher, default rate for electric service.

45. Ms. Edwards is entitled to the lower, standard offer rate service.

46. Since December 1, 2000, and for a significant period thereafter, Ms. Edwards paid NSTAR Electric at the higher, default rate, unaware of the overcharge.

*George Graziano*

47. George Graziano was a Commonwealth Electric Company customer of record, residing at 198 Grove Street, Kingston, Massachusetts, as of March 1, 1998.

48. Mr. Graziano received Commonwealth Electric service at the standard offer rate on and after March 1, 1998 at his 198 Grove Street home.

49. In or about November, 2000, Mr. Graziano moved to 108 Ring Road, Kingston, Massachusetts.

50. Mr. Graziano retained his Commonwealth Electric service when he made this move from one part of the Commonwealth Electric service area to another.

51. Since December 1, 2000, and for a significant period thereafter, NSTAR Electric charged Mr. Graziano at the higher, default rate for electric service.

52. Mr. Graziano is entitled to the lower, standard offer rate service.

53. Since December 1, 2000, and for a significant period thereafter, Mr. Graziano paid NSTAR Electric the higher, default rate, unaware of the overcharge.

## CLASS DEFINITION AND CLASS ISSUES

54. Plaintiffs bring this action on behalf of themselves and a class of all other consumers similarly situated, pursuant to Mass. R. Civ. P. 23.

55. The class consists of all individuals who pay NSTAR Electric for electric service:

- a. who were customers of record of Boston Edison on March 1, 1998, who subsequently moved to another location within the Boston Edison service area and were placed on default service;
- b. who were customers of record of Commonwealth Electric Company on March 1, 1998, who subsequently moved to another location within the Commonwealth Electric service area and were placed on default service; or
- c. who were customers of record of Cambridge Electric Light Company on March 1, 1998, who subsequently moved to another location within the Cambridge Electric service area and were placed on default service; and
- d. who have not chosen a competitive supplier at any time after March 1, 1998.

56. There are questions of law and fact which are common to all members of the class, which questions predominate over any question affecting only individual class members. The principal common issues are:

- a. whether defendants violated tariffs and contracts applicable to the provision of electric service to members of the class by charging plaintiffs and class members at the default service rate rather than at the lower standard offer service rate; and
- b. whether plaintiffs and class members are entitled to future service at the standard offer rate and damages and/or restitution for overcharges they have paid since December 1, 2000.

57. The only individual questions concern the identification of class members and the computation of the relief to be afforded each class member. These questions can be determined by a ministerial examination of the relevant files. Notice can be provided to the class by various means of communication, including the defendants' computerized databases of customers who are class members.

58. Plaintiffs' claims are typical of the claims of the class members. All are based on the same legal and remedial theories.

59. Plaintiffs will fairly and adequately protect the interests of all class members in the prosecution of this action and in the administration of all matters relating to claims stated herein. They are similarly situated with, and have suffered similar injuries as, the members of the class they seeks to represent. Plaintiffs have retained counsel experienced in handling class action suits involving contract overcharges and consumer law. Neither the named plaintiffs nor their counsel have any interest which might cause them not to vigorously pursue this action.

60. A class action is superior to other available methods for the fair and efficient adjudication of the controversy, in that:

- a. the losses suffered by the class members are such that prosecution of individual actions is impractical or economically unfeasible;
- b. by contrast, the illegal revenues obtained by the defendants as a result of their unlawful practices are substantial;
- c. in the absence of the class action device, plaintiffs and the class would be left without a remedy for the wrongful acts alleged, and the defendants would be unjustly enriched;



d. the prosecution of separate lawsuits by individual members of the class would create the risk of inconsistent adjudications with respect to individual class members, which would establish incompatible standards of conduct for the defendants, making concentration of the litigation concerning this matter in this Court desirable;

e. the claims of the representative plaintiffs are typical of the claims of the class; and

f. no unusual difficulties are likely to be encountered in the management of this action as a class action.

61. The class is so numerous as to make it impracticable to join all members of the class as plaintiffs. Based upon the investigation of counsel, the number of class members is estimated to be in excess of 5,000 persons.

#### **Causes Of Action**

62. Plaintiffs reallege and incorporate all paragraphs above as if set forth fully herein.

#### **Count I: Breach of Contract And Applicable Law**

63. All terms of the tariffs are applicable to contracts to provide electric service between the defendants and the plaintiffs and class members.

64. The defendants have breached their contractual obligations to the plaintiffs and class members by failing to provide electric service to them at the standard offer rate.

65. The defendants have breached their obligation under M.G.L. c. 164, § 94 to provide service to customers at the rate specified in their filed tariffs.

## **Count II: Unjust Enrichment**

66. The defendants have been unjustly enriched by failing to fulfill their legal obligation to provide electric service at the standard offer rate to the plaintiffs and class members.

67. Plaintiffs and class members are entitled to equitable remedies including disgorgement, restitution, injunctive relief requiring future adherence to contract, and related injunctive relief as remedies for unjust enrichment.

## **Count III: Declaratory Judgment**

68. Plaintiffs and class members seek a declaration of their rights under M.G.L. c. 164 and the applicable tariffs, specifically a declaration that defendants are improperly charging them the higher, default rate for electric service, are obligated to provide them electric service at the lower, standard offer rate, and are liable to them for the difference in rates imposed.

69. There is an actual controversy between the parties as fully set forth within this Complaint, and declaratory relief is appropriate pursuant to M.G.L. c. 231A.

## **Count IV: Unfair and Deceptive Acts or Practices**

70. By engaging in the conduct complained of, defendants committed unfair and deceptive acts and practices, in violation of M.G.L. c. 93A.

71. As a result of defendants' violations of c. 93A, plaintiffs and the class have been damaged in an amount to be determined at trial.

### **Relief Requested**

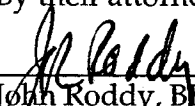
WHEREFORE, Plaintiffs and class members pray that the court enter an order in their favor and against the defendants providing the following relief:

- a. declaring that defendants' imposition of the default rate upon customers who are entitled to the standard offer rate is unlawful, violates the applicable provisions of c. 164, the operative tariffs and c. 93A, and is in breach of the terms of the contracts between the defendants and Plaintiffs and class members;
- b. awarding actual damages to the extent of their contractual overpayments, with interest thereon;
- c. ordering disgorgement of monies wrongfully obtained, with interest thereon;
- d. ordering restitution;
- e. enjoining the defendants to ensure future adherence to the applicable contracts and to provide that customers receive standard offer service in accordance with applicable law;
- f. ordering injunctive relief necessary to enforce the tariffs and other applicable law;
- g. awarding reasonable attorney's fees, costs and expenses; and
- h. granting such other relief as the court considers appropriate in law or in equity.

Respectfully submitted,

Sharon Dwyer, Julie Edwards, George  
Graziano

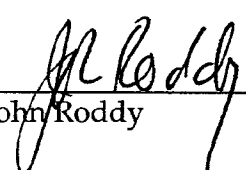
By their attorneys

  
\_\_\_\_\_  
John Roddy, BBO # 424240  
Gary Klein, BBO # 560769  
Grant & Roddy  
44 School Street  
Boston, MA 02108  
(617) 248-8700  
(617) 248-0720 (Fax)

### **JURY DEMAND**

Plaintiffs demand a trial by jury as to all issues so triable.

Date: January 14, 2002


  
\_\_\_\_\_  
John Roddy

### **CERTIFICATE OF SERVICE**

I, John Roddy, one of the attorneys for the plaintiffs in this matter, certify that I have on this day, January 14, 2002 caused the foregoing document to be served in hand upon the defendants' counsel of record:

Richard J. Morrison  
NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199  
(617) 424-2111

David S. Rosenzweig  
Keegan, Werlin & Pabian, LLP  
21 Custom House Street  
Boston, MA 02110  
(617) 951-1400

  
\_\_\_\_\_  
John Roddy

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
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individually and on behalf,  
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,  
BOSTON EDISON COMPANY,  
COMMONWEALTH ELECTRIC COMPANY, and  
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

**Plaintiffs' Assented To Motion For Preliminary Approval Of Settlement Agreement**

The plaintiffs respectfully move this court for preliminary approval of the Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") filed with the Court on this date, entered into between the plaintiffs Sharon Dwyer, Julie Edwards and George Graziano and the defendants NSTAR Electric & Gas Corporation, Boston Edison Company, Commonwealth Electric Company, and Cambridge Electric Light Company (the "NSTAR Entities") in the above-captioned proceeding.


In support of their request, the plaintiffs assert that the proposed Settlement is fair and reasonable and is consistent with the provisions of Mass. R. Civ. P. 23. The NSTAR Entities assent to this motion. In further support of the motion, the plaintiffs refer the

court to the Memorandum In Support of Motion for Preliminary Approval of Settlement Agreement, submitted herewith. A proposed form of Order is attached to the Stipulation and Agreement of Compromise and Settlement as Exhibit D, and attached hereto as well.

WHEREFORE, plaintiffs request that this Court grant this motion and enter an order preliminarily approving the Settlement and the notices attached as exhibits thereto, and setting a hearing to consider final approval of the Settlement.


Dated: January 18, 2002

Respectfully submitted,

  
\_\_\_\_\_  
John Roddy (BBO #424240)  
Gary Klein (BBO #560769)  
GRANT & RODDY  
44 School Street  
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(617) 248-8700

*Attorneys for the Plaintiffs*

Assented to:

  
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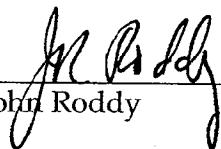
*Attorneys for the Defendants*

CERTIFICATE OF SERVICE

I, John Roddy, one of the attorneys for the plaintiffs in this matter, certify that I have on this day, January 14, 2002 caused the foregoing document to be served in hand upon the defendants' counsel of record:

Richard J. Morrison  
NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199  
(617) 424-2111

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\_\_\_\_\_  
John Roddy

COMMONWEALTH OF MASSACHUSETTS

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SHARON DWYER,  
JULIE EDWARDS and GEORGE GRAZIANO,  
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of all others similarly situated,

Plaintiffs,

v.

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BOSTON EDISON COMPANY,  
COMMONWEALTH ELECTRIC COMPANY, and  
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

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**Plaintiffs' Memorandum In Support Of Motion For Preliminary Approval Of  
Settlement Agreement**

**I. Introduction**

The parties have filed with the Court a proposed settlement of this class action against the defendants NSTAR Electric & Gas Corporation, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), and Cambridge Electric Light Company ("Cambridge") (collectively the "NSTAR Entities" or "NSTAR Electric"). Plaintiffs alleged that the NSTAR Entities had misclassified them and other similarly situated customers by improperly billing them at the higher-priced "default service" rate instead of the "standard offer service" rate for which they should have been billed. Since December 2000, the default service rate has been approximately



15-25% more expensive than the standard offer rate. The settlement ensures that the group of NSTAR Electric customers entitled to the more inexpensive "standard offer service" rates are properly classified in NSTAR Electric's billing systems going forward, that their accounts are adjusted to correct any overcharges and that all customers who have been adversely affected by this billing error are notified of the problem and advised of this settlement and of their rights under it.

Former defendant NSTAR, Inc., is not a party to the settlement, having been dismissed from the case by agreement of the parties and replaced by the defendant NSTAR Electric & Gas Corp. The following describes in more detail the reasons why preliminary approval of the settlement agreement is in the best interests of class members and is consistent with the provisions of Rule 23.

## **II. Statement Of The Case**

In the latter part of the last decade, legislation was introduced to foster the development of a competitive market for the generation and sale of electricity. Statutes of 1997, ch. 164. One aspect of this legislation was designed to protect existing customers of electric utilities from sharp increases in the cost of electricity during the transition from the regulated price environment to the competitive market being established. To protect customers as they were becoming acquainted with the new landscape, they were grandfathered into an initially discounted rate structure for the electric supply portion of their bills. The legislation required the electric utilities to bill existing customers as of March 1, 1998 at the so-called "standard service transition rate" (hereinafter "standard offer rate"), while allowing the utilities to bill other customers at the initially higher "default service rate" (hereinafter "default rate"). G.L. c. 164,

§§1B(b); (d). Customers entitled to the standard offer rate may receive that rate from March 1, 1998 until February 28, 2005. Id.

In conjunction with the new legislation, the existing regulatory tariff mechanism continues to apply to the NSTAR Entities. The tariffs govern electric service provided by the NSTAR Entities to customers within the NSTAR Entities' service area. The tariffs provide, in relevant part, as follows:

Standard Offer Service shall be available to each Customer who was a Customer of Record as of the Retail Access Date and who has not received Generation Service from a Competitive Supplier since the Retail Access Date.

A Customer receiving Standard Offer Service shall be allowed to retain such service upon moving within the service territory of the Distribution Company.

The problem which gave rise to this litigation is that the NSTAR Entities did not properly carry over the standard offer rate for a substantial number of customers who moved within their respective service areas, instead NSTAR Electric began billing these customers at their new address under the higher cost default service rate. Perhaps the principal reason for this error is that there was an almost three year delay between the creation of the two-tiered rate structure and actual implementation of a rate differential. From March, 1998 through November, 2000 default and standard offer rates were identical. As noted above, it was only in December, 2000 that the default service rate became more expensive.

The plaintiffs discovered this problem and filed this class action lawsuit, alleging that they and the class members had been damaged by the NSTAR Entities' conduct in that they were misclassified and thereby overcharged for their electric service during the period they were placed upon default service. The plaintiffs sought, among other things, a judgment declaring the NSTAR Entities' conduct unlawful, ordering the

NSTAR Entities to reclassify incorrectly classified customers, and requiring refunds of overcharges paid.

Plaintiffs, by and through their counsel, have conducted an investigation of the facts, including reviews of the NSTAR Entities' billing and classification procedures, review of the circumstances of more than one hundred individual customers' classifications, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel has conducted interviews with defendants' counsel and others concerning the NSTAR Entities' policies and practices relating to service classification and billing. Plaintiffs' counsel obtained substantial information about the nature and extent of the NSTAR Entities' challenged practices through this informal discovery and, if this settlement is preliminarily approved, will confirm that information by additional formal discovery as set forth below.

After extensive negotiations and the further provision of information relevant to the claims and their resolution, the parties negotiated the Stipulation and Agreement of Compromise and Settlement (the "Settlement") submitted herewith. The Settlement the parties have crafted establishes a common fund from which all class members are entitled to a recovery of 100% of the overcharges they paid as a result of being placed on default service. In addition, most of these class members will receive their refunds automatically, without having to prove their entitlement to an account credit or otherwise affirmatively demonstrating eligibility for the Settlement benefits.

### III. The Terms Of The Settlement

#### *100% Refunds Of Overcharges*

The settlement agreement provides for class members to receive a credit to their NSTAR Electric accounts equal to 100% of the difference between the default service rate they improperly paid and the standard offer rate to which they were entitled. Settlement Agreement, ¶4.

#### *The Settlement Classes*

There are two settlement classes, the "Boston Edison Settlement Class", and the "Cambridge/Commonwealth Settlement Class." The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and

who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or

who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

As defined, the term "Settlement Class Member" means any person who falls within the definition of either Settlement Class. For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and

the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Settlement Agreement, ¶1.

#### *Identified and Non-Identified Class Members*

Each class includes a group of identified and a group of non-identified class members. The group of identified members of each class consists of those persons whose membership in the class is known to the NSTAR Entities by virtue of various searches of computerized information available to the NSTAR Entities. Settlement Agreement, ¶4. The group of non-identified members of each class consists of those persons who may be members of the class, but whose identity is not ascertainable by the means and methods of database review available. Settlement Agreement, ¶5.

NSTAR Electric has conducted a computerized review of customer billing records for all three NSTAR Entities, pursuant to agreed procedures, including social security matching, where possible, and same last name/same address matching. This review produced a list of misclassified customers who either have been or will soon be reclassified. Each such customer will receive or has received a refund based on the difference between service billed at the default service rate and service billed over the same period at the standard offer rate together with an explanatory letter in a form the parties agreed to as part of the settlement negotiations. A copy of the form letter is

attached as Exhibit A to the Settlement Agreement. From this computerized review, NSTAR Electric has determined that a class of approximately 19,800 Boston Edison customers and 3,950 Cambridge and Commonwealth customers are entitled to relief by agreement. Identified customers will not have to take any affirmative action to obtain settlement benefits – they automatically receive full refunds of all amounts they paid in excess of the standard offer rate. Settlement Agreement, ¶4. These circumstances are explained in more detail in the formal Notice each of these identified class members will also receive if the Settlement is approved. Settlement Agreement, Exhibit E-1.

There is another group of approximately 53,100 Boston Edison default customers and approximately 15,300 Cambridge and Commonwealth default customers for whom NSTAR Electric does not have the social security numbers necessary to enable reliable data matching, but for whom there exists at least a possibility of misclassification. Each of these customers has received or will receive a letter, in a form agreed to by the parties as part of the settlement negotiations, informing them of their misclassification. This letter also provides the criteria for standard offer service eligibility and encourages the customer to contact NSTAR Electric if they would like to investigate their status. A copy of this letter is attached to the Settlement as Exhibit B.

In addition, the Settlement provides for a form of the Notice specifically tailored for these potential class members, in which these customers are informed of a toll-free telephone number they can call if they believe that they have been misclassified. Settlement Agreement, Exhibit E-2. There is no evidentiary obligation placed upon unidentified class members to prove entitlement to the settlement benefits. All that is required is that the potential class member verbally provide relevant identity and address information to the Settlement Administrator, CCS, of Newton, Massachusetts. CCS and/or NSTAR Electric will then investigate the claimant's billing and address

information and inform the claimant whether he or she is a class member, and therefore entitled to receive a refund credit under the settlement. Class counsel will work with the NSTAR Entities to resolve any disputes without necessity for court intervention. Those class members who are shown to be part of the class will receive a full refund as described above. Settlement Agreement, ¶¶5, 6. If any claimant is denied relief after contacting the available "800" number or otherwise raising a claim, such person will be provided information including the name, address, and telephone number of Class Counsel so that they may choose to pursue a dispute of that denial. Settlement Agreement, ¶6.

#### *Notice and Administration*

The NSTAR Entities will pay all costs of identifying class members and issuing class notice, separate and apart from the common fund. These amounts and the costs of settlement administration will be paid directly by the NSTAR Entities. Settlement Agreement, ¶¶4.3, 17. The Settlement provides for notice to the classes through mailing of the notices attached to the Stipulation as Exhibits E-1 and E-2 ("Class Notice"), and via the explanatory letters which the NSTAR Entities have already provided to identified class members and are in the process of providing to unidentified potential class members (attached as Exhibits A, B and C, respectively).

The language of the Class Notices and the explanatory letters have been negotiated and agreed to by the parties. As outlined above, to ensure that any potential class members who have not been identified by the NSTAR Entities are given the opportunity to obtain the benefits of the settlement, the Notice to unidentified potential class members will be mailed to more than 68,000 electric customers, some of whom might be eligible class members. As unidentified class members must take affirmative action to be entitled to the class benefits, the first page of the notices directed to those

persons contains a conspicuous, boxed, highlighted disclosure explaining the "800" number information gathering procedure applicable to those persons.

#### **IV. The Settlement Agreement Should Be Preliminarily Approved As Fair, Reasonable And Adequate**

Judicial approval of class action settlements requires a two-step process. In the first step, the Court makes a preliminary determination whether the settlement falls "within the range of possible approval". H. Newberg, A. Conte, *Newberg on Class Actions* (3d.ed. 1993) §11.25. As one Court has observed, "[t]his determination is similar to a determination that there is 'probable cause' to think the settlement is fair and reasonable." Alaniz v. California Processors, Inc., 73 F.R.D. 269, 273 (N.D.Cal. 1976). Once the settlement is found to be "within the range of possible approval," a final approval hearing is scheduled and notice is provided to the class. *Id.*

The second step involves a final determination, following a hearing at which any objections by class members may be considered, that the settlement is fair, reasonable and adequate from the standpoint of the class. *Newberg on Class Actions*, §11.41. The Courts generally favor settlements of class actions. "There is usually an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for Court approval." *Id.* In determining whether class action settlements should be approved, "[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement. [citation omitted] . . . They do not decide the merits of the case or resolve unsettled legal questions." Carson v. American Brands, Inc., 450 U.S. 79, 88 n.14 (1981).

In order to begin the approval process, the plaintiffs request that the Court enter the proposed Preliminary Approval Order (submitted as Exhibit D to the Settlement



Agreement) certifying the class, preliminarily approving the settlement agreement, providing notice to the class, and scheduling the final approval hearing. In view of the record before the Court, the plaintiffs respectfully submit that this request should be granted. The settlement is well within "the range of possible approval" and should be preliminarily approved in all respects.

The settlement was negotiated at arm's length by knowledgeable counsel. The settlement will produce substantial benefits for the class. The value of these benefits is enhanced by the fact that they will be provided to class members now, without the delay, burden and risks of further litigation. The class described above has a well-defined community of interests in that there are common questions of law and fact among its members, class representatives with claims typical of the class and who adequately represent the class.

#### *Reasons for Approval*

In deciding whether to approve a proposed settlement, the Court must determine whether it is fair, reasonable, and in the best interests of the class which will be affected by it. Sniffin v. Prudential Ins. Co., 395 Mass. 415, 480 NE2d 294, 297-98 (1985). Relevant factors to this determination include: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of the settlement offer; (2) the complexity, length and expense of further litigation; (3) the nature and extent of opposition to the settlement; and (4) the progress of the proceedings. *Id.*, at 298-301, citations omitted. The opinion of plaintiffs' counsel as to the desirability of settlement is an important consideration: "Judges should not substitute their own judgments as to optimal settlement terms for the judgment of the litigants and their counsel." *Id.*, at 298. There is a "strong initial presumption" that an arms-length settlement arrived at by counsel experienced in the

type of litigation involved on the basis of sufficient information concerning the claims at issue is fair. 2 H. Newberg, A. Conte, Newberg on Class Actions, § 11.41 (3d ed. 1993).

Counsel for plaintiff and the class have substantial experience in consumer class action litigation and have devoted their legal practice to representation solely of consumer interests. In the view of plaintiffs' counsel, the factors synopsized herein demonstrate that the proposed settlement is fair, reasonable, and appropriate.

### **V. The Settlement Class Is Appropriately Certified**

Class certification is appropriate if (1) the class is sufficiently numerous to make joinder of all parties impracticable, (2) there are common questions of law and fact, (3) the claim of the named plaintiff representative is typical of the claims of the class, and (4) the named plaintiff will fairly and adequately represent the interests of the class. Mass. R. Civ. P. 23(a). In addition, a plaintiff must show that common questions of law and fact predominate over individualized questions, and that the class action is superior to other available methods for fair and efficient adjudication of the controversy. Mass. R. Civ. P. 23(b). *See also, Fletcher v. Cape Cod Gas Co.*, 394 Mass. 595, 601, 477 NE 2d 116 (1985). All of the rule's requirements are met in the settlement classes for which the parties request certification.

#### *A. Numerosity*

Rule 23(a)(1) requires that "the class [be] so numerous the joinder of all members is impracticable." The standard of impracticability does not mean "impossibility" but only difficulty or inconvenience of joining all members of the class. The issue is not the numerical size of the class but, as explicitly stated in Rule 23(a)(1), that joinder is impracticable. *Hatisberry v. Lee*, 311 U.S. 32, 41 (1941). Here, the two classes

encompass more than twenty thousand individuals. This overwhelming number of class members demonstrates that joinder is simply a logistical impossibility. *See, e.g., Brophy v. School Comm. of Worcester*, 6 Mass. App. Ct. 731, 383 NE2d 521 (1978)(130 class members sufficient); *Gorsey v. I.M. Simon & Co.*, 121 F.R.D. 135, 138 (D. Mass. 1988)(800 to 900 member class made joinder impracticable). Here, the class numbers in the tens of thousands.

### *B. Commonality*

Rule 23(a)(2) establishes the commonality element that there be "questions of law or fact common to the class." The questions of law in this litigation are absolutely identical among the class members. In practical terms, the dispositive legal issue is whether NSTAR Electric's charging of "standard offer" entitled customers the default rate for electric service violates the applicable statutes and tariffs. There is no individual legal issue in this determination.

The commonality element is met here because the NSTAR Entities treated all of the plaintiff class members in exactly the same way. Under the circumstances alleged, thousands of customers were overcharged for electric service and are entitled to a refund of the overcharges paid. On this score, the NSTAR Entities treated class members identically, and so the commonality element is met. *See, e.g., Kaminiski v. Shawmut Credit Union*, 416 F. Supp. 1119, 1122-1123 (D. Mass. 1976)(each consumer class member borrower treated in identical manner by bank).

Rule 23(a)(2) does not require that every single question of law or fact raised in the litigation must be common. It is sufficient that a common course of conduct affecting all class members is alleged. *Weld v. CVS Pharmacy*, 11 Mass. L. Rptr. 21, 24 (Suffolk, November 19, 2000)(Brassard, J.), *aff'd*, *Weld v. Glaxo Wellcome, Inc., et al*, 434 Mass. 81,

746 NE 2d 522 (2001). The standardized course of conduct alleged here satisfies this requirement. *See, Duhaime v. John Hancock Mutual Life Ins. Co.*, 177 F.R.D. 54, 62 (D. Mass. 1997). Here, the only issue of law or fact which differs among the various class members is their individual measure of damages, since each necessarily paid a differing amount on their electric bills. In addition, in a small individual stakes class like this one, commonality is subsumed by the predominance requirement of the rule. *Amchem Products v. Windsor*, 117 S. Ct. 2231, 2243 (1997).

### *C. Typicality*

Rule 23(a)(3) requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class...". For virtually the identical reasons discussed in the preceding section, this element is also met.

"Typicality is established when there is 'a sufficient relationship . . . between the injury to the named plaintiff and the conduct affecting the class,' and the claims of the named plaintiff and those of the class 'are based on the same legal theory'." *Weld v. Glaxo Wellcome*, 434 Mass. at 87, quoting 1 H. Newberg, *Class Actions* § 3.13, at 3-76 (3d ed. 1993). To be typical within the meaning of the rule simply requires that the claims of the named plaintiffs arise from the same type of conduct which gives rise to the class members' claims. *Burstein v. Applied Extrusion Technologies, Inc.*, 153 F.R.D. 488, 491 (D. Mass. 1994); *Adair v. Sorenson*, 134 F.R.D. 13, 17 (D. Mass. 1991); *Fletcher v. Cape Cod Gas Co.*, 394 Mass. at 606. In this case the class members were all injured in the same way by the NSTAR Entities' conduct. As described above, the only area in which any of the class members are in any material way different from the others is that each will be entitled to damages based on his/her individual circumstances. However, differences in the amount of damages sought do not render the claims atypical. *Weld v. Glaxo Wellcome*, 434 Mass. at 92. Here each of the plaintiffs asserts the

identical claims and requests for relief as are applicable to all class members, arising out of the same, patterned course of conduct.

#### *D. Adequacy Of Representation*

Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." This element is generally characterized as an inquiry into whether the attorneys together with the named plaintiffs will act diligently on behalf of the class and whether any potential conflicts of interest exist or are likely to arise between the named plaintiffs and class members. Amchem, 117 S. Ct. at 2251, & n.20; Weld v. CVS Pharmacy, 11 Mass. L. Rptr. at 24. Undersigned counsel are active practitioners whose experience in consumer law and class action litigation is demonstrated by the affidavit attached hereto as Exhibit 1 to this memorandum.

As to the named plaintiffs, the courts usually look simply to whether the representatives' interests are in any way antagonistic to or in conflict with those of the class members. Amchem, 117 S. Ct. at 2251. Such conflict must involve the subject matter of the suit and may not be minor or collateral. Berman v. Narragansett Racing Association, Inc., 414 F.2d 311, 317 (1st Cir. 1969), *cert. denied* 369 U.S. 1037; Blackie v. Barrack, 524 F.2d 891, 908-910 (9th Cir. 1975). There is no conflict or antagonism whatsoever between the representatives and the class members.

#### *E. Predominance*

Rule 23(b) requires that "the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy." As discussed above, virtually all of the issues of law and fact are identical among the class members, and only the ultimate damage award for each class

member will be different. Under these circumstances, the requirements of Rule 23(b) are present. The courts have routinely found predominance of common questions where the claims relate to a common course of conduct. Waste Mgt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 296 (1st Cir. 2000) (predominance requirement satisfied by "sufficient constellation of common issues [that] bind class members together" and "cannot be reduced to a mechanical, single-issue test"); Duhaime, 177 F.R.D. 54, 64 (D. Mass. 1997) (requirement is "readily met in cases alleging consumer . . . fraud" where claim alleges single course of conduct, quoting Amchem, 117 S. Ct. at 2250.)

It is precisely because the claims of the class members and the circumstances under which these claims arise are identical and because the method of proving damages will be exactly the same that the predominance element has been met.

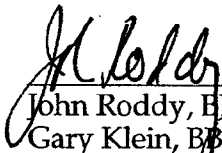
#### *F. Superiority*

A class action is the superior method of resolving large scale claims if it will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." Amchem, 117 S. Ct. at 2246. One reason that a class action is the superior method of proceeding in a case of this type is that it allows the plaintiffs to pool claims which would be uneconomical to litigate individually." Phillips Petroleum Co. v. Shutts, 472 U.S. 797, 809 (1985). Here, the aggregate claims of the class are approximately \$1.5 million, but on average each class member's claim is about \$60, making it uneconomic for individuals to pursue these claims on their own, and therefore unlikely they will do so. Grace v. Perception Technology, Inc., 128 F.R.D. 165, 171 (D. Mass. 1989); Randle v. SpecTran, 129 F.R.D. 386, 393 (D. Mass. 1988).

"This case presents a classic illustration of the policies of judicial efficiency and access to courts that underlie the consumer class action suit: it aggregates numerous small claims into one action, whose likely range of recovery would preclude any individual plaintiff from having his or her day in court." Weld v. Glaxo Wellcome, 434 Mass. at 93. In addition, the difficulties of managing a class action are vitiated by the prospect of this settlement. When "confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . for the proposal is that there be no trial." Amchem, 117 S. Ct. at 2248.

## VI. Conclusion

Without the class action device, this matter could not be litigated fairly and efficiently given the tens of thousands of customer accounts involved. A class action settlement is the best method for class members to obtain a remedy for the conduct which this case challenges. For the foregoing reasons, the plaintiffs respectfully request that this Court approve the Settlement on a preliminary basis and conditionally certify the class.

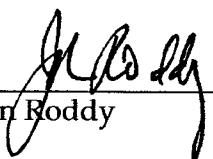
  
John Roddy, BBO #424240  
Gary Klein, BBO #560769  
GRANT & RODDY  
44 School Street  
Boston, MA 02108  
(617) 248-8700

CERTIFICATE OF SERVICE

I, John Roddy, hereby certify that on this 14 day of January, 2002, I served the foregoing document by causing a true and correct copy to be delivered in hand to the following:

Richard J. Morrison  
NSTAR Electric & Gas Corporation  
800 Boylston Street  
Boston, MA 02199

David S. Rosenzweig  
Keegan, Werlin & Pabian, LLP  
21 Custom House Street  
Boston, MA 02110

  
\_\_\_\_\_  
John Roddy



COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
C.A. NO. 01-1817-C

SHARON DWYER,  
JULIE EDWARDS and GEORGE GRAZIANO,  
individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

NSTAR ELECTRIC & GAS CORPORATION,  
BOSTON EDISON COMPANY,  
COMMONWEALTH ELECTRIC COMPANY, and  
CAMBRIDGE ELECTRIC LIGHT COMPANY,

Defendants.

**Stipulation and Agreement of Compromise and Settlement**

This Stipulation and Agreement of Compromise and Settlement (the "Stipulation" or "Settlement") is entered into between the plaintiffs Sharon Dwyer, Julie Edwards and George Graziano (the "Plaintiffs") and the defendants in the above-captioned proceeding, Boston Edison Company ("Boston Edison"), Commonwealth Electric Company ("Commonwealth"), Cambridge Electric Light Company ("Cambridge") and NSTAR Electric & Gas Corporation ("NSTAR Electric"), an affiliate that provides common administrative and professional services including, but not limited to, billing services to its affiliates. Collectively, the four defendants are referred to herein as the "NSTAR Entities" or the "Defendants". The parties have agreed to this

Settlement, and to the dismissal of claims against NSTAR, Inc.<sup>1</sup> (including NSTAR, a Massachusetts business trust and the parent company of the NSTAR Entities), subject to this Court's approval, as provided below.

WHEREAS:

A. This action was commenced in this Court by the filing of a complaint on April 23, 2001 (the "Action"). The Action was brought on behalf of a class of electric utility customers claiming to be entitled to "standard offer service" and the lower rates currently obtained thereby. Plaintiffs alleged that the NSTAR Entities had misclassified them and other similarly situated customers by placing them on "default service", which presently carries higher rates.

B. On November 25, 1997, legislation was enacted to introduce competition to the electric generation market. Chapter 164 of the Acts of 1997. The legislation provides, *inter alia*, that consumers will receive either the "standard service transition rate" ("standard offer rate"), the "default service rate" ("default rate") or elect to be served through the competitive market. G.L. c. 164, §§1B(b); (d). The legislation requires that each electric distribution company provide the standard offer rate to customers within each electric distribution company's service area as of March 1, 1998 who do not choose a competitive supplier. G.L. c. 164, §1B(b). The legislation provides that customers entitled to the standard offer rate will receive that rate from March 1, 1998 until February 28, 2005. *Id.* At all relevant times, Boston Edison, Commonwealth and Cambridge were subject to tariffs governing the provision of electric service within their respective service areas (the "tariffs").

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<sup>1</sup> There is no actual corporation with that name in the Commonwealth.

C. The NSTAR Entities are subject to and must abide by the tariffs. The tariffs govern electric generation service provided by the NSTAR Entities to customers within the NSTAR Entities' respective service areas. The tariffs provide, in relevant part, as follows:

Standard Offer Service shall be available to each Customer who was a Customer of Record as of the Retail Access Date and who has not received Generation Service from a Competitive Supplier since the Retail Access Date.

A Customer receiving Standard Offer Service shall be allowed to retain such service upon moving within the service territory of the Distribution Company.

Plaintiffs alleged that, between March 1, 1998 and January 1, 2001, the NSTAR Entities failed to maintain procedures sufficient to ensure that customers who moved within their respective service areas would retain standard offer service.

D. Plaintiffs alleged that they and the class members had been damaged by the NSTAR Entities' conduct in that they were misclassified and thereby charged the higher default service rate for their electric service during the period they were placed upon default service. Plaintiffs sought, among other things, a judgment declaring the NSTAR Entities' conduct unlawful, ordering the NSTAR Entities to reclassify incorrectly classified customers, and requiring refund of overcharges paid.

E. Plaintiffs, by and through their counsel, have conducted an investigation of the facts, including reviews of the NSTAR Entities' billing and classification procedures, review of the circumstances of more than one hundred (100) individual customers' classifications, and have analyzed the relevant legal and factual issues. Plaintiffs' counsel have conducted interviews with Defendants' counsel and others concerning the NSTAR Entities' policies and practices relating to service classification and billing. Plaintiffs' counsel obtained substantial information about the nature and extent of the NSTAR Entities' challenged practices through this

) informal discovery and, if this settlement is preliminarily approved, will confirm that information by additional formal discovery as set forth below.

) F. Notwithstanding agreement to settle this case, the NSTAR Entities deny the facts or claims alleged in Plaintiffs' complaint and in this Action, and deny any liability to any member of the Settlement Classes or to any third party. The NSTAR Entities also have contended, and continue to contend, that they have valid and complete procedural and substantive defenses to each of the claims for relief asserted by Plaintiffs in the complaint and each of the equitable or legal remedies or claims for damages sought by Plaintiffs on behalf of themselves and the proposed Settlement Classes in the Action. The NSTAR Entities have also weighed the risks and possible costs of litigation of the Action against the benefits of the proposed Settlement, and consider it desirable that the claims be settled on a global basis to avoid the time, risk, and expense of defending protracted litigation and in order to achieve a final resolution of the claims being settled.

) G. After extensive negotiations and the provision of information relevant to the claims and their resolution, the parties negotiated the settlement contained in this Stipulation. Based on their review and analysis of the relevant facts and legal principles, Plaintiffs and their counsel believe that, in consideration of all the circumstances and after prolonged and serious arms' length settlement negotiations with the NSTAR Entities' counsel, the terms and conditions embodied in this Stipulation are fair, reasonable, and adequate, and beneficial to and in the best interests of the Plaintiffs and the proposed Settlement Classes (as defined below). Plaintiffs' counsel have determined to execute this Stipulation and urge its approval by the Court after consideration of the following substantial benefits that the Settlement bestows upon the Settlement Classes:

(a) The members of the Settlement Classes, as defined in Section 1 below, will receive a refund, in the form of a credit to their NSTAR Entities' electric bill, of 100% of the difference between the default service rate they improperly paid and the standard offer rate to which they are entitled;

(b) The members of the Settlement Classes, as defined in Section 1 below, will be reclassified as standard offer service customers and will thereby receive standard offer service and be charged such standard offer rates for as long as they continue to be eligible for such rates;

(c) The Settlement provides for members of the Settlement Classes to receive reclassification and refund credit in the most expeditious and efficient manner practicable, and thus much sooner than would be possible were the claims asserted to be litigated through trial and potential appeal, even if such claims were to be found to be meritorious in all respects—in fact, more than 23,000 class members have already been provided their credits;

(d) The Settlement provides for significant monetary and other benefits to the members of the Settlement Classes beyond reclassification and refund credit, including:

(i) the Settlement obliges the NSTAR Entities, at their sole expense, to identify members of the Settlement Classes who were misclassified based on NSTAR Entities' records, to the maximum extent practicable, and to provide the benefits of the Settlement to such persons without their having to take any affirmative steps;

(ii) the settlement obliges the NSTAR Entities to provide notice to potential class members who could not be identified from the NSTAR Entities' records and to provide reclassification and refund credit to those who respond and who are then determined to be misclassified;

(iii) that the NSTAR Entities, in settling these claims, will not assert claimed defenses available to them, whether procedural or substantive; and

(iv) attorneys fees payable to class counsel will be paid by the NSTAR Entities rather than from any funds that would otherwise be available to the class.

H. The parties intend that the proposed Settlement embodied in this Stipulation resolves all claims and disputes between the Plaintiffs, Settlement Class Members and the NSTAR Entities in the Action.

) In light of the foregoing, the parties propose to settle this case in accordance with the terms, provisions and conditions of this Stipulation as set forth below.

NOW, THEREFORE, IT IS STIPULATED AND AGREED, subject to approval by the Court as provided herein below pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure by and between the NSTAR Entities and the Plaintiffs for themselves and for the Settlement Classes, by and through their respective counsel and representatives, that all claims, rights and causes of action, in law or in equity, including but not limited to claims arising under the G.L. c. 164, § 1B, G.L. c. 164, § 94, G.L. c. 164, § 93 and G.L. c.93A, or any other state law or regulation governing the provision of electric generation service by an electric utility, or otherwise, and including damages, losses and demands of any nature whatsoever (including, but not limited to, claims for compensatory damages, interest, consequential damages, restitution, punitive damages, contempt, sanctions, penalties, injunctive relief, declaratory relief, or otherwise), whether known or unknown claims, that are, could have been or might in the future be asserted by the Plaintiffs or any member of the Settlement Classes, whether directly, representatively or in any other capacity, against the NSTAR Entities or any of their present or former officers, directors, shareholders, employees, accountants, representatives, attorneys, parent companies (other than NSTAR), subsidiaries, affiliated companies, divisions, and all successors, predecessors-in-interest, heirs, agents and assigns in connection with or that arise out of the NSTAR Entities' charging of default electric service rates when standard offer service should have been provided to a member of the Settlement Classes, or any acts, facts, transactions or occurrences, alleged or otherwise asserted or that could have been asserted in this Action from the beginning of time through the date the Settlement Agreement becomes final (collectively, the "Released Claims"), shall be compromised, settled, released and discharged with prejudice (the

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foregoing shall herein respectively be referred to as the "Release"), upon and subject to the following terms and conditions:

1. Settlement Classes. This Action shall proceed on behalf of two classes for the purposes of settlement, the "Boston Edison Settlement Class", and the "Cambridge/Commonwealth Settlement Class."

The *Boston Edison Settlement Class* is defined as all persons who are located in the Boston Edison service territory and receive electric service from Boston Edison:

- a) who were customers of record of Boston Edison on March 1, 1998, and who subsequently moved to another location within the Boston Edison service area and were placed on default service; and
- b) who have been continuous customers of Boston Edison at all times since March 1, 1998.

The *Cambridge/Commonwealth Settlement Class* is defined as all persons who are located in the Cambridge/Commonwealth service territories and receive electric service from Cambridge/Commonwealth:

- a) who were customers of record of Commonwealth on March 1, 1998, and who subsequently moved to another location within the Commonwealth service area and were placed on default service, and who have been continuous customers of Commonwealth at all times since March 1, 1998; or
- b) who were customers of record of Cambridge on March 1, 1998, and who subsequently moved to another location within the Cambridge service area and were placed on default service, and who have been continuous customers of Cambridge at all times since March 1, 1998.

For purposes of this Settlement, the term "Settlement Classes Member" means any person who falls within the definition of either Settlement Class.

For the purposes of this Settlement, a person shall be deemed a "continuous customer" of the entity that provides their electric service if:

- (a) the customer has not chosen a competitive supplier of electric service at any time after March 1, 1998; and

(b) the customer has not terminated its service with the entity that provides its electric service for a period of 90 days or more at any time after March 1, 1998.

Each class includes a group of identified and a group of non-identified class members.

The group of identified members of each class consists of those persons whose membership in the class is known to the NSTAR Entities by virtue of various searches of computerized information available to the NSTAR Entities by the methods described below. The group of non-identified members of each class consists of those persons who may be members of the class, but whose identity is not ascertainable by the means and methods of data review described below.

2. Class Representatives. For purposes of this Settlement only, Plaintiffs Sharon Dwyer, Julie Edwards and George Graziano shall be designated as Class Representatives. It is hereby agreed, for purposes of this Settlement only, that Plaintiffs' claims are typical of the claims of the Settlement Classes and that Plaintiffs are adequate representatives of the Settlement Classes.

3. Class Counsel. For purposes of this Settlement only, the firm of Grant & Roddy shall be designated as Class Counsel.

4. Identified Members of the Settlement Classes. The NSTAR Entities have completed a review of customer billing records, pursuant to agreed procedures, including identification of multiple accounts containing identical social security number fields, and identification of multiple accounts containing identical last name and address fields. When an existing default service account was matched with a prior standard offer service account by these methods, additional review was conducted to determine if the default service account was that of a "continuous customer" of the entity that provides their electric service as defined in paragraph 1 above.



) This review produced a list of misclassified customers who either have been or will soon be reclassified. Each such customer will be or has been reclassified and will receive or has received a refund credit based on the difference between service billed at the default service rate and service billed over the same period at the standard offer rate together with an explanatory letter in the form attached hereto as Exhibit A. As of the date of this Settlement Agreement, from this computerized review, the NSTAR Entities have identified approximately 19,800 Boston Edison customers and 3,900 Cambridge and Commonwealth customers who are entitled to relief as Identified Class Members.

) 4.1 In the class member identification process, the NSTAR Entities have acted diligently and have used reasonable efforts to identify members of the Settlement Classes who were misclassified. The processes and procedures utilized by the NSTAR Entities have been explained to Class Counsel, and by and through Class Counsel, to an expert in statistical methods. In addition, upon preliminary approval of this Settlement, the substance of those processes and procedures will be subject to confirmatory discovery as set forth in paragraph 20 below.

4.2. The NSTAR Entities will provide Class Counsel with a report setting forth the names and last known addresses of each Settlement Class Member so identified. Plaintiffs' counsel shall use this information only for purposes of administering the Settlement and subject to the terms of the Confidentiality Stipulation dated November 30, 2001.

) 4.3. The identification process has been and shall continue to be conducted by the NSTAR Entities at their sole expense.

4.4 As of the date of this Stipulation, the total amount of credits to identified class members anticipated to be paid is approximately \$1,450,000, representing an average credit of more than \$61 per identified class member.

5. Non-Identified Class Members.

5.1. *Boston Edison.* There is a group of approximately 53,100 Boston Edison default service customers for whom the NSTAR Entities do not have social security numbers for the purposes of matching, but for whom the parties agree there is a reasonable possibility of misclassification. A letter and formal notice (in the forms attached hereto as Exhibits B and E2 respectively), will be sent to these customers explaining the grounds on which they may be misclassified and asking them to contact NSTAR Electric if they believe that they have been misclassified. The letter as well as the notice will include an "800" number for customers who believe that they have been misclassified to request reclassification to standard offer service.

5.2. *Cambridge and Commonwealth.* There is a group of approximately 15,300 Cambridge and Commonwealth default customers for whom the NSTAR Entities do not have social security numbers for the purposes of matching, but for whom the parties agree here is a reasonable possibility of misclassification. A letter and formal notice will also be sent to these customers explaining the grounds on which they may be misclassified and including an "800" number for customers who believe that they may be misclassified. Copies of the Cambridge/Commonwealth letter and notice are attached hereto as Exhibits C and E2 respectively.

5.3 Settlement Claims Administrator. The NSTAR Entities will use CCS, of Newton, Massachusetts, as a claims administrator to obtain relevant information from non-identified claimants and assist the NSTAR Entities in processing and resolving such claims for settlement

benefits. Class Counsel will work cooperatively with the NSTAR Entities to review disputed claims and to seek informal resolutions of disputes. The claims process will request that customers contact the claims administrator by telephone or in writing within 75 days.

5.4 As of the date of this Stipulation, the total number of non-identified class members and the total amount of any credit payable to them is unknown.

6. Review of Claims to Identify Additional Class Members. Non-identified members of the Settlement Classes, who claim eligibility for such membership by contacting the available "800" number or in writing, will be reviewed for eligibility as class members by the NSTAR Entities and/or the claims administrator. Class Counsel may also submit to the NSTAR Entities additional names and addresses of customers who are or do become known to the firm through independent investigation. The NSTAR Entities will investigate each claim submitted by telephone or in writing. The NSTAR Entities will reclassify claimants and provide a refund credit calculated in the same manner provided in paragraph 4 if circumstances warrant. If any claimant is denied relief after contacting the available "800" number or otherwise raising a claim, such person will be provided information including the name, address, and phone number of Class Counsel so that they may choose to pursue a dispute of that denial. The NSTAR Entities agree to work with Class Counsel to expeditiously review and resolve any disputes raised hereunder.

7. Timing of Refund Credit. For Class Members to whom a refund credit is due, if such credit has not already been made, it shall be made no later than sixty (60) days after the Settlement is final, or thirty (30) days after the status of any non-identified class member who is determined to be entitled to a credit is resolved, whichever is later. For any members of the

Settlement Classes whose status is disputed, any refund credit shall be made as soon as practicable after the claim is resolved and the Settlement is final.

7.1 In addition to the settlement payments determined in accordance with paragraphs 4, 5 and 6, the NSTAR Entities shall pay each of the three named plaintiffs \$1,000 for serving in the capacity of Class Representatives, subject to approval of the Court.

8. Treatment of Customers Who Cannot be Located. Individuals who are no longer customers of the NSTAR Entities will not receive a refund. The parties agree that the time, effort, and expense involved in locating such individuals is unwarranted in light of the potential benefit to those individuals.

9. Full Settlement and Release. The obligations of the NSTAR Entities under this Stipulation shall be in full settlement, compromise, release and discharge of the Released Claims and each of them. In accordance with the provisions of the Final Order, at the time the Settlement becomes final: (i) for good and sufficient consideration, the receipt of which is hereby acknowledged, Plaintiffs and each Settlement Class Member shall be deemed to have, and by operation of the Final Order shall have fully, finally, and forever released, relinquished and discharged all Released Claims against the NSTAR Entities; and (ii) the NSTAR Entities shall have no other or further liability or obligation to any Settlement Class Member in any court or forum (state or federal) with respect to the Released Claims, except as expressly provided herein.

10. Certification of Settlement Classes. For settlement purposes only, the parties hereto agree that, as part of the Settlement Notice and Order (as defined below), the Court may make preliminary findings and enter an order granting provisional certification of the Settlement Classes subject to final findings and ratification in the Final Order (defined below), and appointing both Plaintiffs and Class Counsel as representatives of the Settlement Classes.

11. Dismissal as to NSTAR, Inc. The parties are filing on this date a joint motion to dismiss this case as to the defendant NSTAR, Inc. without prejudice. The parties understand and agree that members of the class can achieve the relief provided for under this Settlement without NSTAR, Inc. as a party to this action or to this Settlement. The parties understand and agree that this action can have no preclusive effect with respect to the claims of any class member against any person or entity who is not a party to this agreement.

12. Certification for Settlement Only. The NSTAR Entities do not consent to certification of the Settlement Classes for any purpose other than to effectuate the settlement of the Action. If this Settlement Agreement is terminated pursuant to its terms, or the Settlement does not become final for any reason, the order certifying the Settlement Classes, and all preliminary and/or final findings regarding the Court's provisional class certification order, shall be automatically vacated upon notice of same to the Court, and the Action shall proceed as though the Settlement Classes had never been certified and such findings had never been made, without prejudice to any party to either request or oppose class certification on any basis, including but not limited to lack of jurisdiction. In such event, the NSTAR Entities shall also be entitled to raise any jurisdictional or other challenges or defenses to the complaint or any claims for legal or equitable relief or damages of any kind, and Plaintiffs, Class Counsel and members of the Settlement Classes shall be barred and estopped from asserting that the NSTAR Entities' conduct or actions in negotiating and proposing the Settlement through and including the termination of the Settlement constituted a waiver or other bar (including but not limited to laches) to the assertion of any such challenges or defenses.

13. Motion for Entry of Initial Order. As soon as practicable after this Stipulation has been executed, Plaintiffs shall move the Court for preliminary approval of the Settlement and

provisional certification of the Settlement Classes for purposes of implementing the Settlement.

Plaintiffs shall apply for an Order substantially in the form annexed hereto as Exhibit D (the "Order"), providing, among other things:

(a) That for purposes of settlement only, the requirements for provisional certification of the Settlement Classes have been satisfied, this action shall be maintained and proceed as a class action, pursuant to Rule 23 of the Massachusetts Rules of Civil Procedure, on behalf of the Settlement Classes, and the Plaintiffs and Class Counsel shall be appointed as representatives of the Settlement Classes;

(b) That the Settlement is preliminarily approved as being within the range of reasonableness such that notice thereof should be given to members of the Settlement Classes;

(c) That the Notice of Proposed Class Action Settlement substantially in the form annexed hereto as Exhibits E-1 and E-2 (the "Notice") is approved by the Court; and that the mailing of the Notice in the manner and form set forth in the Order meets all the requirements of Rule 23 of the Massachusetts Rules of Civil Procedure, the Constitution of the United States, and any other applicable law, constitutes the best notice practicable under the circumstances, and shall constitute valid, due and sufficient notice to all persons entitled thereto;

(d) That the Order and form of judgment substantially in the form of Exhibit F hereto is approved;

(e) That a hearing or hearings (the "Settlement Hearing") shall be held before this Court, at the respective time and date to be set by the Court, to consider and determine whether the requirements for final certification of the Settlement Classes have been met and whether the proposed Settlement of the Action on the terms and conditions set forth in the Stipulation, including as part of the settlement the payment of Class Counsel's attorneys' fees and reimbursement of expenses, is fair, reasonable and adequate and should be approved by the Court, and whether the judgment approving the Settlement and dismissing the Action on the merits and with prejudice against Plaintiffs and members of the Settlement Classes should be entered, and to consider such other matters as may properly come before the Court in connection with the Settlement Hearing;

(f) That the Settlement Hearing may, from time to time and without further notice to the Settlement Classes (except those who filed timely and valid objections), be continued or adjourned by order of the Court;

(g) That all members of the Settlement Classes will be bound by the Final Order dismissing the Action on the merits and with prejudice;

(h) That any objections by any member of the Settlement Classes to: (i) the certification of the Settlement Classes and the proposed settlement contained in the Settlement Agreement and described in the Notice and/or (ii) the entry of the Final Order, shall be heard and any papers submitted in support of such objections shall be considered by the Court at the Settlement Hearing only if, on or before a date (or dates) to be specified in the Notice and Order, such objector files with the Court a notice of his or her intention to appear, submits documentary proof that he or she is a member of the Settlement Classes, states the basis for such objections, and serves copies of the foregoing and all other papers in support of such objections upon counsel for the parties identified in the Notice so that such papers are actually received by such counsel by the date set by the Court; and

(i) That the parties shall file and serve all papers in support of the application for final approval of the settlement and/or in response to any valid and timely objections received by the designated counsel for the parties identified in the Notice on or before a date (or dates) set by the Court.

14. Order and Final Judgment. If, at or after the Settlement Hearing, the Settlement (including any modification thereto made with the consent of the parties as provided for herein) shall be approved by the Court, Plaintiffs shall promptly request the Court to enter an Order and Final Judgment (the "Final Order") substantially in the form attached hereto as Exhibit F that contains language:

(a) Finding that the numerosity, commonality, typicality, adequacy and superiority requirements necessary for certification of the Settlement Classes on a full and fair basis have been satisfied, approving both the final certification of the Settlement Classes and the Settlement, judging its terms to be fair, reasonable and adequate and in the best interests of the Settlement Classes, directing consummation of the Settlement in accordance with its terms and provisions and ordering implementation of its terms and procedures;

(b) Dismissing the Action and the Released Claims as to the NSTAR Entities on the merits, with prejudice and without costs except as herein provided, against Plaintiffs and all members of the Settlement Classes, and releasing and discharging the Released Claims;

(c) Reserving continuing and exclusive jurisdiction to implement, enforce, administer, effectuate, and interpret the Settlement and this Stipulation; and

(d) Awarding attorneys' fees and expenses to Class Counsel, or reserving jurisdiction with respect thereto.

15. Definition of Finality. The approval by the Court of the Settlement proposed by the Stipulation shall be considered final, and the Settlement shall be considered final (and the NSTAR Entities' obligations hereunder shall arise) for purposes of this Stipulation, on the date five business days after the Final Order becomes "final." As used in this Stipulation, "final" means: (a) upon the entry by the Court of the Final Order and when the applicable period for the filing or noticing of an appeal of such Final Order shall have expired without an appeal having been filed; or (b) if an appeal is taken, upon entry of an order affirming the Final Order and when the applicable period for the filing or noticing of an appeal or petition for review of such affirmance of the Final Order shall have expired without a further appeal or petition for review having been filed, or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal; or (c) if an appeal is taken from or a petition for review is filed relating to any decision affirming the Final Order, upon entry of an order in such appeal finally affirming the Final Order or dismissing such petition for review without right of further appeal or upon entry of any stipulation dismissing any such appeal with no right of further prosecution of the appeal. None of the obligations of the NSTAR Entities pursuant to the Settlement shall become effective until the Settlement becomes final. Notwithstanding the above, the NSTAR Entities shall have the option to declare the Settlement effective and final upon approval by this Court or upon such approval having been finally affirmed on appeal or no appeal therefrom having been taken within the applicable time period limiting the taking of such an appeal.



16. Class Counsel Application for Attorneys' Fees and Expenses. Plaintiffs' counsel shall apply to the Court for approval of an award of attorneys' fees, plus reimbursement of costs and expenses (including experts' fees). The NSTAR Entities will assent to this motion. As an additional benefit to the Settlement Classes, any expenses and fees so awarded shall be paid by the NSTAR Entities (subject to the limits in the following sentence) and shall not diminish the benefits of the Settlement to the Settlement Classes. Class Counsel shall apply for an award of fees and expenses not to exceed \$217,500, and the NSTAR Entities shall not object to Class Counsel's request for fees and expenses up to that amount and will pay such amount if awarded by the Court subject to the terms of this Stipulation. The NSTAR Entities agreed to the payment of such fees and expenses only after reaching agreement upon all other material terms of this Settlement. Any attorneys' fees and expenses so awarded to Class Counsel shall not be payable unless and until the Final Order becomes final. Any attorneys' fees and expenses awarded to Class Counsel shall be paid as the Court may direct within ten business days after the Settlement becomes final.

16.1 Except as expressly provided in this Stipulation, the NSTAR Entities shall not be liable for any additional fees or expenses of any plaintiff or Settlement Class Member in connection with the Action. If any application is made to this Court by a person other than those identified in this Stipulation for an award of attorneys' fees or expenses with regard to this Settlement, the NSTAR Entities shall not be restricted from opposing such application. Class Counsel agree that they will not seek any additional fees or costs (whether for service provided before or after the approval of this Stipulation) from the NSTAR Entities in connection with the Settlement of this Action.

17. Notice and Administration Costs. The NSTAR Entities will pay the costs of preparing and mailing the Notice to Class Members and all other settlement administration costs. Plaintiffs and Class Counsel shall have no responsibility for any such costs regardless of whether the Settlement is consummated.

17.1 The Notice of the proposed Settlement shall be provided to each member of the Settlement Classes by first-class mail in accordance with the terms and conditions of the Order. If a Notice sent by the NSTAR Entities to a member of the Settlement Classes in accordance with the Order is returned with a forwarding address provided by the Postal Service, the NSTAR Entities will cause it to be remailed to the address provided. If a Notice is returned without a forwarding address provided by the Postal Service, or is otherwise designated by the Postal Service as being an invalid address, the NSTAR Entities shall not be required to take further steps to provide the Notice to such Class Members.

18. Effect of Settlement Not Being Final. In the event that the Stipulation is terminated in accordance with its terms, or the Settlement as provided for in this Stipulation is not approved by the Court or otherwise does not become final or effective for any reason, then the Stipulation shall become null and void and of no further force and effect with respect to the parties, all negotiations, proceedings, and statements relating thereto shall be without prejudice as to the rights of any and all parties hereto and their respective predecessors and successors, and all parties and their respective predecessors and successors shall be restored to their respective positions existing as of the date of the Stipulation. In such event, this Stipulation, to the extent permitted by law, shall not be used in any action or proceeding for any purpose and any Order entered in accordance with the terms of the Stipulation shall be treated as vacated, nunc pro tunc.

19. No Admissions. This Stipulation, and all negotiations, statements, proceedings, acts performed and documents executed or exchanged pursuant to or in connection or furtherance of the Stipulation are not, and shall not in any event: (i) be construed as or used as, or deemed to be evidence of, the validity of any claim, an admission or concession on the part of the NSTAR Entities of any liability of or wrongdoing by the NSTAR Entities, or a waiver of any claim, defense or argument; or (ii) be offered or received in evidence, or used in any way as an admission, concession or evidence of any fault, omission, liability or wrongdoing of any nature on the part of the NSTAR Entities, or a waiver of any claim, defense, or argument, in either case in any action or proceeding in any court, legislative session or hearing, administrative agency or other tribunal. This Stipulation and the Settlement also shall not be construed as, or deemed to be evidence of, an admission or concession that the Plaintiffs or any member of the Settlement Classes have suffered any damage, or on the part of the Plaintiffs or any member of the Settlement Classes, that any of their claims asserted in the Action are without merit or that damages recoverable in the Action do not exceed the aggregate of the amounts payable pursuant to this Stipulation.

20. Confirmatory Discovery and Other Proceedings. The NSTAR Entities shall continue to cooperate in the production of relevant information to Plaintiffs regarding the merits of and the scope of Plaintiff's claims. Within forty-five (45) days of executing this Stipulation, the NSTAR Entities agree to designate and make available current employees who are knowledgeable as to the NSTAR Entities' investigation of billing and service classification procedures for confirmatory interviews or depositions related to: (i) the NSTAR Entities records concerning Settlement Class Members and potential settlement refund credit amounts; and (ii) the extent, nature and procedures used by the NSTAR Entities in their search for Class Member

billing and classification records. Any such information provided in the course of such confirmatory discovery shall be protected by and subject to the terms and conditions of the Confidentiality Stipulation dated November 30, 2001.

21. Due Authority of Attorneys. Each of the attorneys executing this Stipulation on behalf of a party hereto warrants and represents that he or she has been duly authorized and empowered to execute this Stipulation on behalf of each such respective party.

22. Extensions of Time. Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions of this Stipulation, provided such agreements to extend time are signed by counsel for the parties and filed with the Court.

23. Entire Agreement; Amendments; Interpretation. This Stipulation, including all Exhibits annexed hereto, constitutes the entire agreement among the parties and supersedes any prior or contemporaneous agreements or understandings between them relating to the subject matter hereof. This Stipulation may not be modified or amended except in a writing signed by or on behalf of all parties hereto or their successors-in-interest. All the Exhibits are material and integral parts hereof, and all terms of this Stipulation are contractual and not mere recitals and shall be construed as if drafted by all parties hereto.

24. Successors. All provisions of this Stipulation are and shall be binding upon and inure to the benefit of each of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns; all parent, subsidiary and related corporations and entities, divisions, employees, agents, directors, officers and attorneys of any settling party hereto and all other persons claiming any interest in the subject matter hereto through any of the parties hereto, including Plaintiffs and any Settlement Class Member. The entity NSTAR is specifically excepted from the provisions of paragraph 24.


25. Counterparts. This Stipulation may be executed in any number of actual counterparts and by the different settling parties hereto on separate counterparts, each of which when so executed and delivered shall be an original. The executed signature page(s) from each actual counterpart may be joined together and attached to one such original and shall constitute one and the same instrument.


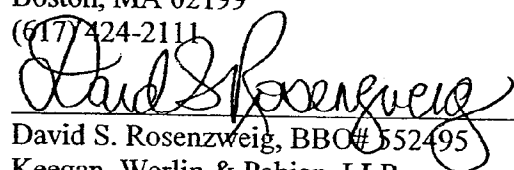
26. Waivers. The waiver by any party of any breach of this Stipulation shall not be deemed or construed as a waiver of any other breach, whether prior, subsequent, or contemporaneous, of this Stipulation.

27. Governing Law. This Stipulation shall be construed and enforced in accordance with the laws of the Commonwealth of Massachusetts.

28. Retention of Jurisdiction. The administration, implementation, consummation and interpretation of this Stipulation and the Settlement as provided herein shall be under the exclusive and continuing jurisdiction and authority of this Court with respect to all parties hereto and all beneficiaries hereof, including Plaintiffs, Class Counsel, the NSTAR Entities, Settlement Class Members and Released Parties. Any and all disputes, requests or petitions regarding or arising out of the enforcement, construction, administration or interpretation of the Stipulation or any of its provisions, or the Notice, Order or Final Order, must be made, if at all, to this Court by motion to the Court with service on all parties and their counsel.

IN WITNESS WHEREOF, the parties have executed this Stipulation individually as of the date first above written.

  
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